

EXHIBIT R

INSURANCE AND INDEMNITIES REQUIREMENTS

1. Insurance Required. Developer shall obtain and cause to be in force and effect the following insurance:
 - 1.1. Commercial General Liability. Developer shall maintain “occurrence” form Commercial General Liability insurance with a limit of not less than \$10,000,000 for each occurrence, \$10,000,000 Products and Completed Operations Annual Aggregate, and a \$10,000,000 General Aggregate Limit. The policy shall cover liability arising from premises, operations, independent contractors, products-completed operations, personal injury and advertising injury. Coverage under the policy will be at least as broad as Insurance Services Office, Inc. policy form CG 00 01 07 98 or equivalent thereof, including but not limited to, separation of insureds clause. If any Excess insurance is utilized to fulfill the requirements of this paragraph, such Excess insurance shall be “follow form” equal or broader in coverage scope than underlying insurance.
 - 1.2. Automobile Liability. Developer shall maintain Business Automobile Liability insurance with a limit of \$5,000,000 for each accident for Developer’s owned, hired, and non-owned vehicles assigned to or used in the performance of the work or services under this Agreement. Coverage will be at least as broad as Insurance Services Office, Inc. coverage code “1” “any auto” policy form CA 00 01 07 97 or equivalent thereof. If any Excess insurance is utilized to fulfill the requirements of this paragraph, such Excess insurance shall be “follow form” equal or broader in coverage scope than underlying insurance.
 - 1.3. Workers Compensation. Developer shall maintain Workers Compensation insurance to cover obligations imposed by federal and state statutes governing Developer’s employees engaged in the performance of work or services under this Agreement, and shall also maintain Employers’ Liability Insurance of not less than \$100,000 for each accident, \$100,000 disease for each employee and \$500,000 disease policy limit.
2. Form of All Insurance. All insurance required by this Agreement shall meet the following requirements:
 - 2.1. All policies except workers’ compensation must name City and its employees, officials, representatives, officers, directors and agents (collectively, “Additional Insureds”) as

additional insureds. Developer shall cause coverage for Additional Insureds to be incorporated into each insurance policy by endorsement. City may give Developer notice of City's election from time to time that any or all of the Additional Insureds not be named as Additional Insureds with respect to specific insurance coverages.

2.2. All policies must provide City with at least thirty (30) days prior notice of any cancellation, reduction or other change in coverage.

2.3. All policies shall require that notices be given to City in the manner specified for notices to City under this Agreement.

2.4. The insurer's duty to notify City of changes in coverage shall not include phrases such as "endeavor to" or "but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents or representatives".

2.5. All policies shall contain provisions that neither Developer's breach of a policy requirement or warranty, nor failure to follow claims reporting procedures, shall affect coverage provided to City.

2.6. All insurance policies shall contain a waiver of any transfer rights of recovery (subrogation) against City and all other Additional Insureds.

3. Form of Required Insurance. All insurance policies required by this Agreement shall meet the following requirements:

3.1. "Occurrence" coverage is required. "Claims made" insurance is not permitted.

3.2. Policies must also cover and insure Developer's activities relating to the business operations and activities conducted from the Property.

3.3. Developer must clearly show by providing copies of insurance policies, certificates, formal endorsements or other documentation acceptable to City that all insurance coverage required by this Agreement is provided.

3.4. No deductibles, retentions, or "self insured" amounts shall exceed One Hundred Thousand Dollars (\$100,000) in the aggregate per year. Developer shall be solely responsible for any self-insurance amount or deductible. City may require Developer from time to time to secure payment of such deductible or self-insured retention by a surety bond or irrevocable and unconditional letter of credit.

3.5. No deductible shall be applicable to coverage provided to City.

3.6. Developer shall provide forms of new or replacement policies for City's review not less than thirty (30) days prior to the effective date of the new or replacement policy.

4. Insurance Certificates. Developer shall evidence all insurance required by this Agreement by furnishing to City certificates of insurance annually and with each change in insurance coverage. Certificates must evidence that the policy referenced by the certificate is in full force and effect and that the policy satisfies each requirement of this Agreement applicable to the policy. For example, certificates must evidence that City and the other Additional Insureds are additional insureds and that insurance proceeds will be paid as required by this Agreement. Certificates must be in a form reasonably acceptable to City. All certificates shall be in addition to the actual policies and endorsements required. Developer shall provide updated certificates at City's request.
5. Acceptable Insurers. All insurance policies required by this Agreement shall be issued by insurers reasonably acceptable to City. At a minimum, all insurers shall be duly licensed (or qualified unlicensed non-admitted insurer) by the State of Arizona, Department of Insurance. At a minimum, all insurers shall have and maintain an A.M. Best, Inc. rating of B++ 6.
6. Primary Insurance. All insurance required by this Agreement shall be primary insurance. Any insurance or self insurance maintained by City shall not contribute to Developer's insurance.
7. Insurance Proceeds. All insurance proceeds (whether actually paid before or after termination of this Agreement) from any policy required under this Agreement shall be paid directly to City and owned by City for City's use in compensating City for the loss of the Property and use of the Property, protecting City, the Property and City's property from every other loss or exposure suffered by City, and satisfying and securing Developer's obligations hereunder. Thereafter, any remaining proceeds shall be first applied as otherwise required by this Agreement and then allocated among City, Developer and other interested parties as their interests may appear.
8. Indemnity. In addition to all other obligations hereunder, to the fullest extent permitted by law, throughout the term of this Agreement and until all obligations and performances under or related to this Agreement are satisfied and all matters described in this paragraph are completely resolved, Developer shall pay, indemnify, defend and hold harmless City and all other Additional Insureds for, from and against any and all claims or harm related to the Property and/or this Agreement, including without limitation any liability of City under CERCLA pertaining to the Property (the "Indemnity"). Without limitation, the Indemnity shall include and

apply to any and all allegations, demands, judgments, assessments, taxes, impositions, expenses, proceedings, liabilities, obligations, suits, actions, claims (including without limitation claims of personal injury, bodily injury, sickness, disease, death, property damage, destruction, loss of use or other impairment), damages, losses, expenses, penalties, fines or other matters (together with all attorney fees, court costs, and the cost of appellate proceedings) which may arise in any manner out of any use or ownership of the Property related to this Agreement or any actions, acts, errors, mistakes or omissions relating to work or services in the performance of or related to this Agreement, including any injury or damages or cause of action claimed or caused by any employees, contractors, subcontractors, tenants, subtenants, agents or other persons upon or using the Property or surrounding areas related to this Agreement, including without limitation, claims, liability, harm or damages caused in part by City or any other Additional Insured or anyone for whose mistakes, errors, omissions or negligence Developer or City may be liable. The Indemnity shall also include and apply to any environmental, personal injury or other liability relating to City's or Developer's acquisition, ownership or use of real property developed, operated, owned, used, controlled or possessed by City or Developer under this Agreement, excluding actions by City on City-owned property. Notwithstanding the foregoing, the Indemnity does not apply to:

8.1. Claims arising only from the sole gross negligence of City.

8.2. Claims that the law prohibits from being imposed upon the indemnitor.

9. Consultant Indemnity. During the entire term of this Agreement, Developer shall cause all architects, engineers, contractors, construction managers and other consultants, including itself to the extent Developer provides any such services, (collectively "Consultants") contracted to provide professional services in the design, construction, operation or other work regarding the Property to provide to City the following protections:

9.1. To the fullest extent permitted by law, Consultants shall defend, indemnify and hold harmless Developer, City and their respective agents, representatives, officers, directors, officials and employees (including without limitation the Additional Insureds) from and against all claims, damages, losses and expenses (including but not limited to attorney fees, court costs, and the cost of appellate proceedings), relating to, arising out of or resulting from the Consultant's acts, errors, mistakes or omissions relating to professional services relating to the Property. Consultant's said duty to defend, hold harmless and indemnify

shall arise in connection with any claim, damage, loss or expense that is attributable to bodily injury, sickness, disease, death; or injury to, impairment, or destruction of property including loss of use resulting therefrom, caused by any acts, errors, mistakes or omissions related to professional services relating to the Property including any person for whose acts, errors, mistakes or omissions the Consultant may be legally liable. This indemnity does not increase or decrease any non-contract liability that may or may not exist independent of this provision and may or may not be covered or coverable by insurance.

9.2. Professional liability insurance covering acts, errors, mistakes and omissions arising out of the services or work performed by the Consultant or any person employed by him or for whose acts he may be liable, with a limit of not less than Two Million Dollars (\$2,000,000) for each claim. Any "claims made" coverage must extend not less than three (3) years after completion of the work.

Risk of Loss. City is not required to carry any insurance covering or affecting the Property or use of City's property related to this Agreement. Developer assumes the risk of any and all loss, damage or claims to the Property or related to Developer's use of the Property or other property of City, Developer or third parties in connection with Developer's use of the Property throughout the term hereof. City expressly disclaims any representation that required insurance is adequate to protect any person or property against any risks related to the Property or any activities, uses or improvements related to the Property. Developer's obligations to indemnify do not diminish in any way Developer's obligations to insure as set forth in this Agreement; and Developer's obligations to insure do not diminish in any way Developer's obligations to indemnify as set forth in this Agreement. Developer's obligations to indemnify and provide insurance as set forth in this Agreement are in addition to, and do not limit, any and all other liabilities or obligations of Developer under or connected with this Agreement. Developer shall be responsible for any and all damages to its property and equipment related to this Agreement and shall hold harmless and indemnify City with respect thereto regardless of the cause of such damages. In the event Developer secures other insurance related to the Property or any improvements, property or uses related thereto, Developer shall effect an endorsement under such policy waiving any and all insurer's rights of subrogation against City and the other Additional Insureds.